

Message Text

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PAGE 01 BONN 13346 01 OF 02 211235Z
ACTION EUR-12

INFO OCT-01 ISO-00 NSC-05 CIAE-00 DODE-00 PM-05 H-01
INR-10 L-03 NSAE-00 PA-01 SP-02 SS-15 NSCE-00
SSO-00 ICAE-00 INRE-00 TRSE-00 /055 W
-----008849 211244Z /45

O R 211224Z JUL 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 0469
USMISSION USBERLIN IMMEDIATE
INFO AMEMBASSY BERLIN
AMEMBASSY MOSCOW
AMEMBASSY BRUSSELS
AMEMBASSY PARIS
AMEMBASSY LONDON
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 02 BONN 13346

USEEC

E.O. 11652: GDS
TAGS: PGOV, EC, AKB
SUBJECT: EXTENSION OF FRG VOTING LAW FOR
EUROPEAN PARLIAMENT TO BERLIN

REF: (A) USBER 1159
(B) USBER 1717

1. AT A TRIPARTITE MEETING OF ALLIED BONN GROUP REPS
TO DISCUSS THE SUBJECT ON JULY 20, THE UK LEGAL ADVISOR

(EATON) NOTED THAT THE MISSIONS IN BERLIN HAD REDRAFTED
THE OPERATIVE PORTION OF THE BK/O IN REF A AS FOLLOWS:

"SUBJECT TO THE FOLLOWING THE ALLIED KOMMANDATURA
HAS NO OBJECTION TO THE ADOPTION OF THE ABOVE-MENTIONED
LAW IN BERLIN.

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PAGE 02 BONN 13346 01 OF 02 211235Z

THE LAW SHALL TAKE EFFECT SUBJECT TO THE PRO-
VISIONS OF BK/O(77)8. IN ADDITION, NONE OF THE PRO-
VISIONS REFERRING TO THE COMPETENCE OF THE FEDERAL
CONSTITUTIONAL COURT SHALL APPLY IN BERLIN OR TO
REPRESENTATIVES FROM BERLIN.

2. HE EXPRESSED THE FCO'S CONCERNS DESCRIBED IN REF B

AND SAID THE FCO HAD SUGGESTED THE FOLLOWING TEXT FOR CONSIDERATION BY THE BONN GROUP:

"THE LAW SHALL TAKE EFFECT SUBJECT TO THE PROVISIONS OF BK/O(77)8. IN CONSEQUENCE, THE SELECTION OF THE REPRESENTATIVES FROM BERLIN SHALL BE UNDER THE CONTROL OF THE HOUSE OF REPRESENTATIVES IN ACCORDANCE WITH (REFERENCE HERE TO WHATEVER BERLIN INSTRUMENT GOVERNS THE PROCEDURE). IN PARTICULAR, NONE OF THE

PROVISIONS OF THE ABOVE-MENTIONED FEDERAL LAW REFERRING TO THE COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT SHALL APPLY TO OR IN RELATION TO THE REPRESENTATIVES FROM BERLIN OR THE PROCEDURES FOR THEIR SELECTION."

3. THIS WAS DISCUSSED AT SOME LENGTH. THE FRENCH REP (RICHARD) SAID THAT THE FRENCH MISSION IN BERLIN HAD EXPRESSED THE VIEW THAT THERE MUST BE A PARALLELISM BETWEEN THE BUNDESTAG PROCEDURES FOR DETERMINING WHEN AN FRG DELEGATE TO THE EUROPEAN PARLIAMENT HAS LOST HIS SEAT AND THOSE FOR DETERMINING WHEN A DELEGATE FROM BERLIN DOES SO. THE FRENCH MISSION HAD PROPOSED, IN EFFECT, THAT THE BK/O SHOULD PROVIDE FOR THE BERLIN HOUSE OF REPRESENTATIVES TO SET UP AN APPROPRIATE MECHANISM FOR THIS PURPOSE. RICHARD SAID THAT HE PERSONALLY DID NOT AGREE WITH THIS VIEW OF THE FRENCH MISSION.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 13346 01 OF 02 211235Z

4. THE US REP AGREED THAT IN THIS CASE THE ALLIES SHOULD CONFINE THEMSELVES IN THE BK/O TO SAYING WHAT

SHALL NOT HAVE EFFECT IN BERLIN, E.G. THE FEDERAL CONSTITUTIONAL COURT SHALL HAVE NO JURISDICTION, AND LEAVE IT TO THE GERMAN AUTHORITIES TO DETERMINE HOW ANY GAPS SHALL BE FILLED IN WITHIN THE LIMITS LAID DOWN BY THE ALLIES. HE ALSO SAID THAT SINCE THE FRG HAD BEEN GIVEN A COPY OF THE PRESENT DRAFT BK/O (PARAGRAPH 1 SUPRA) IN THE BONN GROUP, AND SINCE THE FRG SAID IT HAD NO OBJECTION TO IT, IT WAS SOMEWHAT LATE FOR THE FCO TO INTRODUCE NEW CHANGES. ACCORDING TO INFORMATION FROM THE FRG REPS, THE BK/O SHOULD BE PUBLISHED VERY SOON IN ORDER TO AVOID THE PUBLIC APPEARANCE OF POLITICAL DIFFICULTIES WITH THE TAKEOVER OF THE ELECTION LAW IN BERLIN. RICHARD CONFIRMED THAT TIME WAS OF THE ESSENCE.

5. IN VIEW OF THE FCO'S STRONG VIEWS, HOWEVER, IT WAS AGREED TO CONSIDER A SLIGHT REVISION TO THE PRESENT DRAFT. THE DRAFT SET OUT BELOW

(PARAGRAPH 7) WAS PREPARED AND IT WAS AGREED THAT IT
SHOULD BE PROVIDED TO THE FRG IN THE BONN GROUP ON

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PAGE 01 BONN 13346 02 OF 02 211234Z
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C O N F I D E N T I A L SECTION 02 OF 02 BONN 13346

JULY 21. IT WAS ALSO SUGGESTED THAT THE MISSIONS IN
BERLIN PROVIDE A COPY OF THE SENAT. EATON SAID THAT
HE THOUGHT HE COULD CONVINCE THE FCO THAT THE NEW
DRAFT MET THE FCO'S CONCERNS, ESPECIALLY SINCE THE
NEW DRAFT REFERS TO THE SELECTION OF REPRESENTATIVES
BEING UNDER THE "CONTROL" OF THE HOUSE OF REPRESENTA-
TIVES, I.E. THE HOUSE IS RESPONSIBLE FOR DETERMINING
WHETHER AND UNDER WHAT CONDITIONS THEY ARE NO LONGER
ELIGIBLE TO CONTINUE IN THE EUROPEAN PARLIAMENT. AT
THE SAME TIME, THE TEXT APPEARS TO BE INNOCUOUS ENOUGH
FOR THE FRG AND SENAT TO ACCEPT IT.

6. THE ALLIED REPS ALSO CONSIDERED THE DRAFT PRE-
PARED BY THE US AND UK MISSIONS IN BERLIN (REF B).
THE CONSENSUS WAS THAT WHILE THIS MET LONDON'S
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PAGE 02 BONN 13346 02 OF 02 211234Z

CONCERNS, IT MADE SOMEWHAT TOO CLEAR WHAT WAS INTENDED TO BE ACCOMPLISHED. IN SHORT, THE PREFERENCE WAS FOR A MORE AMBIGUOUS BK/O WHICH WOULD SATISFY LONDON (SINCE NO OTHER OBJECTION HAS BEEN EXPRESSED TO THE PRIOR DRAFT BK/O'S) WHILE NOT GIVING THE APPEARANCE TO THE

PUBLIC THAT THE BK/O DOES ANYTHING MORE THAN RENDER THE FCC INCOMPETENT TO PASS ON CASES INVOLVING BERLINERS IN THE EUROPEAN PARLIAMENT.

7. THE SUGGESTED DRAFT IS AS FOLLOWS IN ITS OPERATIVE PORTION:

"SUBJECT TO THE FOLLOWING, THE ALLIED KOMMANDAT-URA HAS NO OBJECTION TO THE ADOPTION OF THE ABOVE-MENTIONED LAW IN BERLIN.

THE LAW SHALL TAKE EFFECT SUBJECT TO THE PROVISIONS OF BK/O(77)8. IN CONSEQUENCE:

A) THE SELECTION OF THE REPRESENTATIVES FROM BERLIN SHALL BE UNDER THE CONTROL OF THE HOUSE OF REPRESENTATIVES.

B) NONE OF THE PROVISIONS REFERRING TO THE COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT SHALL APPLY IN BERLIN OR TO REPRESENTATIVES FROM BERLIN."

8. COMMENT: WE SHARE USBER'S CONCERN ABOUT THE TENDENCY OF THE FRENCH AND BRITISH TO INTRODUCE FOR

DISCUSSION IN THE BONN GROUP MATTERS WHICH HAVE NOT BEEN THOROUGHLY VETTED IN BERLIN. HOWEVER, IN VIEW OF WHAT IS PERCEIVED AS THE URGENCY OF THE MATTER, AND THE WILLINGNESS OF THE BRITISH AND FRENCH TO SEEK TO FIND A SOLUTION WHICH APPEARS OPTICALLY AT LEAST TO BE LIKELY TO CAUSE FEW PROBLEMS WITH THE
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PAGE 03 BONN 13346 02 OF 02 211234Z

FRG WHILE HOPEFULLY SATISFYING THE FCO'S BELATED CONCERNS, WE HAVE NOT SOUGHT TO PUSH THE PROBLEM BACK TO BERLIN. STOESEL

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